U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: MAY 21 2013 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center denied the preference visa petition, reopened the matter on motion, and denied the petition a second time. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an IT solutions provider. It seeks to employ the beneficiary permanently in the United States as a software engineer. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, certified by the United States Department of Labor (DOL). This petition involves the substitution of the beneficiary listed on the application for permanent employment certification. The substitution of beneficiaries was formerly permitted by the DOL. On May 17, 2007, the DOL issued a final rule prohibiting the substitution of beneficiaries on applications for permanent employment certification effective July 16, 2007. *See* 72 Fed. Reg. 27904 (codified at 20 C.F.R. § 656). As the filing of the instant petition predates the final rule, and since another beneficiary has not been issued lawful permanent residence based on the application for permanent employment certification, the requested substitution is permitted. Upon reviewing the petition, the director determined that the evidence did not establish that the beneficiary possessed a master's degree in the major field listed on the ETA Form 9089. The director denied the petition accordingly.

As set forth in the director's most recent decision dated March 18, 2010, the sole issue in the instant petition is whether the beneficiary possessed a master's degree in the major field listed on the ETA Form 9089.

In pertinent part, section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further provides:

> A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Id.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

As noted above, the ETA Form 9089 in this matter is certified by the DOL. The DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

None of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. Federal courts have recognized the scope of DOL's role in reviewing the ETA Form 9089. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the appplication for permanent employment certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the [application for permanent employment] certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in the application for permanent employment certification is to examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). USCIS's interpretation of the job's requirements, as stated on the application for permanent employment certification must involve reading and applying the plain language of the certification form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the application for permanent employment certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the ETA Form 9089.

The key to determining the job qualifications is found on the ETA Form 9089 Part H. This section of the application for permanent employment certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

The required education, training, experience, and special requirements for the offered position are set forth at Part H of the ETA Form 9089, lines 4-14. Here, Part H shows that the position requires a master's degree, or foreign educational equivalent, in computer science, engineering, or math and six months of experience in the job offered. While counsel asserts on appeal that the beneficiary's degree is in a field "closely related to Computer Science," the ETA Form 9089 does not state that a "related" field would be acceptable.

On the section of the application for permanent employment certification eliciting information about the beneficiary's education, he states that he attended the and received a Master of Science in Management. The record contains the beneficiary's academic record for this credential.

The record also contains an evaluation from . signed the evaluation, dated October 23, 2009. The evaluator states that the beneficiary "attained a Master of Science Degree in Computer Information Systems and Management," based upon the evaluator's "extensive experience" and a review of the beneficiary's transcripts.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

On appeal, counsel submits a letter dated March 31, 2010, signed by , Professor and Associate Dean at the . The letter states that the beneficiary completed "the degree requirements for a Master of Science in Management with a specialization in MANAGEMENT of INFORMATION SYSTEMS from the School of Management…in Spring of 2003." While both and note that the petitioner took computer or information system courses, neither individual compares the beneficiary's total coursework with the required coursework for a master's degree in computer science, engineering, or math.

In the instant petition, although the beneficiary holds a U.S. Master of Science degree, the record contains no relevant, probative evidence indicating that the beneficiary has ever received a master's degree, or a foreign educational equivalent, in computer science, engineering, or math, as required by the Form ETA 9089. Therefore, the beneficiary does not meet the job requirements set forth on that form.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.